

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

WESLEY INTERNATIONAL, INC. d/b/a
UNIVERSAL APPLICATORS

Employer

and

CASE 7-RC-21496

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO¹

Petitioner

APPEARANCES:

A. David Mikesell, Attorney, of Detroit, Michigan, for the Employer.
Patricia Manzo, of Flint, Michigan, for the Petitioner.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,² the undersigned finds:

¹ The names of the parties appear as amended at the hearing.

² Both parties filed briefs, which have been carefully considered. The Employer attached to its brief two orders from the Bankruptcy Court which post-date the hearing in this matter. Since the orders are clearly relevant to the determination in the instant proceeding, were not available at the time of the hearing, and appear to be official court records, I take administrative notice of the orders and make them part of the record herein.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

By the instant petition, the Petitioner seeks to represent a unit of approximately 100 production and maintenance employees, including hi-low drivers, e-coat employees, powder techs, plant clerical employees, rail coordinators and shipping clerks, employed by the Employer at its facility located at 3085 Reid Road, Grand Blanc, Michigan; but excluding office clerical employees, sales employees, engineers, professional employees, technical employees, confidential employees, group leaders, guards and supervisors as defined in the Act. The Employer contends that the instant petition should be held in abeyance pending the imminent sale of the Grand Blanc facility in concurrent bankruptcy proceedings. The Petitioner argues that the instant petition should nonetheless be processed despite the pending sale and an election ordered, subject to the Petitioner withdrawing the petition if the sale is consummated.

The Employer is a Michigan corporation engaged in painting, coating and electrocoating parts, including engine cylinder heads, engine blocks, bumpers, engine cradles, wheels, radiator supports and coil springs for the automotive industry. The Employer operates several facilities in the States of Iowa and Michigan, and the Canadian province of Ontario, including its Grand Blanc facility, the only facility involved in this proceeding, which is known as Universal Applicators. On June 29, 1998, the Employer filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Eastern District of Michigan, Southern Division. After the filing of the bankruptcy petition, the Employer remained in possession of its assets and continued its production operations as a debtor-in-possession. Because the Employer was unable to obtain long term financing beyond March 31, 1999, from General Motors Corporation, its major customer, or from any other entity, efforts at reorganizing the Employer's debt structure failed and liquidation proceedings were

begun. Two of the Employer's facilities in Iowa and Saginaw, Michigan, were sold in November 1998 as part of the Employer's liquidation process.

On February 17, 1999, after the filing of the petition in the instant case, but before the hearing herein on February 23, the Employer filed a motion with the Bankruptcy Court to approve the sale of all its assets and ownership interest in all remaining operations, including Universal Applicators. The motion was based on an executed, proposed purchase agreement submitted by MG Capital, L.L.C., a company wholly unrelated to the Employer, subject to competitive bidding at a public auction scheduled for March 5, 1999, and conducted under the auspices of the Bankruptcy Court. Pursuant to the motion and proposed purchase agreement, if no higher bid was received at the auction, the sale to MG Capital would be closed on March 9, or if complications arose by no later than March 18. At the time of the hearing herein, the Court had not ruled on the Employer's motion.

After the close of the hearing, on March 1, 1999, the Bankruptcy Court issued two orders granting the Employer's motion to sell its assets at the March 5 auction. However, based on MG Capital's failure to "commit to its Asset Purchase Agreement by February 25, 1999," the order approved the Employer's entering into a separate asset purchase agreement with MetoKote Corporation, subject to higher or better offers at the auction sale. The order provided that a hearing would be held immediately upon conclusion of the auction sale based on any objections, but in no event would the sale be closed beyond March 19, 1999. All proceeds from the sale would go to creditors of the bankruptcy estate.

Based on the foregoing, the sale of the Employer's assets and business, and the cessation of its employment relationship with the petitioned-for employees, are imminent and certain. *Larson Plywood Co.*, 223 NLRB 1161 (1976). The Bankruptcy Court's directive to sell the Employer's remaining assets has been methodically carried forward and has achieved certainty by the execution of asset purchase agreements. See *Hughes Aircraft Co.*, 308 NLRB 82 (1992). Although it is possible that a higher bid from an unknown entity may prevail at the public auction sale, procedures are in place in the Bankruptcy Court's orders for the expeditious closing of any sale. Under these circumstances, and where there is no evidence as to any prospective purchaser's plans to hire or retain the existing workforce, the Board will not conduct an election and will dismiss the petition. *Concourse Village*, 276 NLRB 12 (1985); *Martin Marietta Aluminum, Inc.*, 214 NLRB 646 (1974). In the event the sale of the Grand Blanc facility is not completed, or upon the completion of the sale to a new entity, the Petitioner may file a new petition.

Accordingly, **IT IS HEREBY ORDERED** that the petition filed herein be, and hereby is, dismissed, without prejudice.³

Dated at Detroit, Michigan, this 4th day of March, 1999.

(SEAL)

/s/ William C. Schaub, Jr.
William C. Schaub, Jr., Regional Director
National Labor Relations Board
Region Seven
Patrick V. McNamara Federal Building
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³ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C. by **March 18, 1999**.